

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4410 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NARMADABEN R GANCHI

Versus

COMPETENT AUTHORITY & ADDITIONAL COLLECTOR (ULC)

Appearance:

MR PJ VYAS for Petitioners
K.C.Shah, AGP, for Respondent No. 1, 2

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 21/06/96

ORAL JUDGEMENT

This petition is directed against the judgment and order passed by the Urban Land Tribunal, Ahmedabad, in appeal No.127/86 under section 33 of the Urban Land (Ceiling & Regulation) Act, 1976 (Act) dated 27th February 1991 confirming the order of the Competent Authority and

Additional Collector, U.L.C. Vadodara.

2. The petitioners are the owners of land bearing survey No.98 admeasuring 10421 sq. mtrs. of land situated in village Akota, Taluka Baroda. The husband of the petitioner No.1 had submitted a scheme under section 21 of the Act before the Competent Authority at Baroda for the said land and the scheme had been sanctioned by the Competent Authority on 29.4.80. The Competent Authority had cancelled the scheme as there was breach of some conditions. The scheme has not been started within the period of one year from the date of the order and therefore, the scheme was cancelled by the Competent Authority by the order dated 25.7.83. The petitioner had filed an appeal against the said order of the Competent Authority under section 33 of the Act before the Urban Land Tribunal. The appeal was allowed and the order of the Competent Authority dated 25.7.83 was quashed and set aside. It was observed by the Tribunal that the period of five years from the date of sanction of the order dated 29.4.80 should be given to the petitioner for completion of the scheme. The matter was, thereafter, remanded before the Competent Authority.

3. After the remand, the Competent Authority again cancelled the scheme by his order dated 8.9.86 only on the ground that the scheme had not been completed within five years as required under the conditions of sanction order. Thus, it was held that there was breach of condition No.1 of the order dated 29.4.80. The petitioner being aggrieved by the said order had filed appeal No.127/86 before the Urban Land Tribunal, Ahmedabad. The appeal was dismissed by the Tribunal on 27.2.91. Hence this petition under Article 226/227 of the Constitution of India.

4. It may be mentioned at this stage that the jurisdictional sweep of this Court in a writ petition under Article 226/227 of the Constitution of India is very much circumscribed. This court does not sit as an appellate authority over the decision of the authorities below. There is no any failure of exercise of jurisdiction or wrong exercise of jurisdiction. No illegality is spelt out. No perversity is noticed. The last, but one, paragraph of the impugned order of the Tribunal is very material. It reads as under:

"There is, therefore, clear violation of the condition that the construction should be completed within a period of five years, and as such as per the provisions of section 21(2) for

contravention of the conditions subject to which the permission has been granted the land in respect of which the scheme had been submitted can be declared as excess vacant land. However, according to condition No.18 of the sanction order it has also been prescribed by the State Government in the Circular mentioned earlier, in case the construction is not completed as per the approved scheme within a period of five years land remaining vacant, and the land on which there is incomplete construction can be treated as vacant land, and steps can be taken to acquire it as excess vacant land. In the instant case even though 21 houses have been constructed as per the report of the Surveyor dated 1.10.88, as per the "PANCHNAMA" dated 16.1.86 as well as the report of the Surveyor only 12 buildings had been completed out of the 43 on 16.1.86. Even according to the report of the Superintending Engineer dated 22.5.86 only 14 buildings out of the 43 had been completed when a person from his office had inspected the buildings. Therefore, within a period of five years from the date of sanction order only 12 buildings had been completed, and as such only the area of these buildings and the appurtenant land can be exempted from the holding of the Appellants under the provision of condition 18 of the sanctioning order while the remaining lands will have to be declared as excess vacant land in view of the provision of section 21(2)."

It could very well be seen from the aforesaid observations that the Tribunal has held that the areas on which buildings had been completed within the period of five years and the appurtenant land can be exempted from the holdings of the petitioner under the provisions of condition 18 of the sanctioning order while remaining land could be declared as excess vacant land in view of the provisions of section 21(2) of the Act. It cannot be said for a moment that the aforesaid observations are in any way illegal or perverse requiring interference of this Court. Therefore, in the opinion of this Court, there is no substance in this petition.

5. In the result, this petition is dismissed. Rule discharged. Interim relief shall stand vacated. There shall be no order as to costs.

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